

Ombudsman's Determination

Applicant	Mr N
Scheme	Siemens Benefit Scheme (the Scheme)
Respondent	Trustee Secretarial Services Limited (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint against the Trustee concerns the provision of an incorrect pension benefit quotation. Mr N contends that he should be entitled to the incorrectly quoted pension. He asserts that he has suffered a financial loss of £51,175.80, plus RPI increases.

Background information, including submissions from the parties

4. Following Mr N's request for early retirement figures, the Trustee sent Mr N an incorrect estimate dated 3 July 2017. It was based on a retirement date of 31 May 2017, payable at age 65. The covering letter said:

“...the NWOG [No Worse Off Guarantee] part of the pension is estimated and is based on factors which are subject to change, and therefore cannot be guaranteed until nearer the actual retirement date.”
5. The incorrect illustration was as follows:-
 - A pension of £9,600.06 a year; or
 - a tax-free pension commencement lump sum of £59,875.80 (which included Mr N's AVC fund estimated to be £11,147.50; his Investor Plan fund estimated to be £31,578.22); and a pension of £8,981.40 a year.
6. Mr N decided to take voluntary redundancy around the end of 2017 but decided not to draw his pension benefits until his next birthday in February 2018.

7. In January 2018, Mr N contacted the Trustee and informed them that he wanted to draw his pension from 14 February 2018.
8. On 9 January 2018, the Trustee sent Mr N an illustration. The covering letter said:

“Please note that it has come to our attention that the quotation provided to you back in July 2017 was calculated using the wrong early retirement factor. Please accept our sincere apologies for this error and the misleading information.”
9. The illustration was as follows:-
 - A tax-free pension commencement lump sum of £51,055.11 (including part of Mr N’s current AVC fund estimated to be £17,999.17; his current Investor Plan fund estimated to be £33,586.06); and a pension of £7,631.76 a year; or
 - receive a tax-free pension commencement lump sum of £51,055.11 (including Mr N’s current AVC fund estimated to be £17,999.17; his current Investor Plan fund estimated to be £33,586.06); a pension of £6,481.20 a year; and a temporary pension of £3,259.32 a year until Mr N reaches state pension age.
10. On 14 February 2018, the Trustee sent Mr N a letter apologising for the error and explained that:

“As you were part of the business that ceased contributions to the Siemens Benefits Scheme (SBS) on 31st March 2009, following the joint venture with the Gores Group, the early retirement factor used in our calculations is determined by your age as at 31st March 2009. As you were under 50 at that date, the early retirement factor applied to your pension is 4% for each year prior to age 65. The quotation that you were sent in July 2017 was incorrectly based on you being over age 50 on 31st March 2009, and therefore the early retirement factor applied was 3.6% for each year before age 60...Although we always advise members when sending out retirement quotations that the benefits are estimates only and cannot be guaranteed, in light of the difference between the anticipated benefits and the actual benefits as at 14th February 2018, I would like to offer an ex gratia payment of £1,000.00 in full and final settlement of this complaint.”
11. Unhappy with the Trustee’s decision, Mr N raised a formal complaint under the Scheme’s internal dispute resolution procedure (**IDRP**).
12. On 4 July 2018, the Trustee sent Mr N a response under Stage 2 of the IDRP that said:

“As you know, it was agreed that your complaint would proceed directly to Stage 2 of the Scheme’s IDRP...Following the Trustee’s investigation of your complaint, the Trustees are satisfied that: the July 2017 Estimate applied incorrect early retirement factors which overstated your benefits; and the

January 2018 Estimate applied the correct early retirement factors...The NWOOG only “bites” if the overall package of benefits that you would have received from the GEC Plan are greater than the overall package of benefits that you will receive from the Scheme. As early retirement factors are only one feature of a pension scheme’s benefit design, it is possible for the overall package of benefits from the Scheme to be greater than the benefits you would have received from the GEC Plan, even if the GEC Plan applied more generous early retirement factors...Accordingly the Trustees are satisfied that the January 2018 Estimate is the correct statement of your Scheme benefits.”

13. Mr N brought the complaint to this Office in March 2018.

14. On 20 August 2018, in the email to this Office, the Trustee provided further comments:

“In preparing the Trustee’s response to Mr N’s complaint, an error with the calculation of Mr N’s benefits was detected. Unfortunately, whilst the Trustee requested one aspect of the administrator’s calculations in relation to Mr N’s benefits to be checked by the Trustee’s actuarial advisors prior to the issue of the Stage 2 response, it has become apparent that due to a misunderstanding this check was not carried out. The Scheme’s administrator is now preparing a benefit statement for Mr N for a retirement date of 14 February 2018...If he is prepared to accept the revised benefits, his pension can be put into payment immediately and he will receive back-payments from 14 February 2018. In addition, the Trustee recognises the significant distress and inconvenience that this matter may have caused, and in light of the further error at Stage 2 of the IDRP, the Trustee would like to increase the compensation offered for distress and inconvenience from £1000 to £2000.”

15. On 7 September 2018, the Trustee sent Mr N a letter that maintained its previous stance and added:

“We informed you that the No Worse Off Guarantee was not triggered in respect of your SBS benefits as they were greater than the benefits you would have received in the former scheme. Unfortunately, this was incorrect...it has been established that the No Worse Off Guarantee is triggered in your case and your benefits are therefore greater than the benefits contained in the quotation issued to you on 9 January 2018...The Trustee has not submitted a formal response to the complaint at this stage. However, if you consider that there are still matters that need to be considered by the Pensions Ombudsman, the Trustee would like the opportunity to respond to your concerns and, if necessary, submit a formal response...Please find enclosed a revised benefit statement showing your current benefits as verified by the Trustee’s actuarial advisors...”

16. The revised estimate was as follows:-

- Receive a pension of £9,036.00 a year; or
 - receive a pension of £7,885.44 a year and a temporary pension of £3,259.32 a year until you reach state pension age; or
 - receive a tax-free pension commencement lump sum of £58,718.48 (including Mr N's current AVC fund estimated to be £18,557.91; his current Investor Plan fund estimated to be £33,684.32); and a pension of £8,807.88 a year; or
 - receive a tax-free pension commencement lump sum of £58,718.48 (including Mr N's current AVC fund estimated to be £18,557.91; his current Investor Plan fund estimated to be £33,684.32); a pension of £7,657.32 a year; and a temporary pension of £3,259.32 a year until Mr N reaches state pension age.
17. On 24 September 2018, Mr N informed this Office in a telephone call that he does not have trust in the latest figures provided to him and asked if they could be checked for him.
18. On 1 October 2018, in a telephone call with this Office, the Trustee confirmed that the estimate dated 7 September 2018 was correct and final. The amounts set out in the estimate had undergone final checks that had not been done previously as this was not the Scheme's usual practice when issuing estimates only. The final checks are only performed when the member applies to draw their pension benefits.

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
- The Trustee has agreed that it sent Mr N an incorrect pension benefit quotation in July 2017, so there is no dispute that an incorrect quotation had been provided. The Adjudicator noted that the Trustee apologised and offered Mr N £2000 in recognition of the significant distress and inconvenience caused.
 - What the Adjudicator needed to establish, was whether the incorrect information caused Mr N to incur a financial loss.
 - Mr N says that he suffered a financial loss of £51,175.80 plus RPI increases. However, Mr N is only entitled to receive his correct level of benefits as prescribed by the Scheme Rules. The Adjudicator did not agree that Mr N had suffered a financial loss because he was never entitled to the overstated pension quotation and had not received more than his correct entitlement. The Trustee has no discretionary powers to make awards other than those defined by the Scheme Rules. The Adjudicator also noted that the error was realised in January 2018 before Mr N decided to draw his pension.

- In the Adjudicator's view, Mr N has suffered a loss of expectation, in that he understood that he was entitled to receive a higher pension figure than the amount to which he was actually entitled; rather than a financial loss, although Mr N has suffered some non-financial injustice. The Pensions Ombudsman's approach in respect of non-financial injustice is that no award will be made unless the injustice is at least significant. Where there has been significant distress and inconvenience, the fixed amount that will be awarded is £500.
 - The Trustee has offered Mr N £2,000 in recognition of the non-financial injustice he has suffered. With reference to the Ombudsman's updated guidance on non-financial injustice, an award of £2,000 would only be directed if the circumstances were severe. The Adjudicator did not believe that such adverse circumstances are applicable here. Consequently, it was highly unlikely that a different, higher award would be made by an Ombudsman.
 - Mr N asked this Office to check the revised figures he was quoted on the 7 September 2018 estimate. While the Adjudicator appreciated Mr N's reluctance to accept the figures in the said pension quote were correct, she explained that this Office does not provide such a service. Therefore, if Mr N would like the figures checked, he may wish to consult an actuary or suitably qualified independent financial adviser to do so. In the Adjudicator's view this complaint should not be upheld.
20. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.
21. Mr N's contention is that there is only one correct set of figures and these are the ones produced in July 2017. He said that the Adjudicator did not provide any evidence to prove otherwise and just relied on the Trustee's confirmation that the figures dated September 2018 were correct.
22. Mr N made an assertion that he has incurred a financial loss because he was offered a redundancy by his employer. When he considered his options, Mr N took into account the severance package and the early retirement figures, provided to him in July 2017.
23. Mr N also disagreed with the Adjudicator when she said that the incorrect figures were only estimates as this is only because part of the quote included his AVC which is money purchase. The main element of the pension is defined benefit and not dependent on market conditions, so therefore is not estimated.

Ombudsman's decision

24. Mr N is only entitled to the correct level of benefits under the rules unless he can prove that he suffered direct financial loss as a result of relying on the incorrect quotation sent to him. The Trustee has explained that in this case its usual validation checks failed. There is no dispute that maladministration occurred when Mr N was sent incorrect benefit quotations and I have a great deal of sympathy with Mr N's frustration that correct benefit figures were not available prior to Mr N leaving service. However, for the reasons set out below I do not believe that the July misstatement has resulted in Mr N incurring a recoverable financial loss.
25. In order to find that a complainant has suffered direct financial loss as a consequence of a misstatement made to them I have to be satisfied on the balance of probabilities that they reasonably relied upon the misstatement when making a decision and, had they known the correct state of affairs, they would have acted differently. In these cases, the burden of proof is on the complainant.
26. It is always difficult for someone to prove what they would have done differently without the benefit of hindsight. In this case, I do not consider that Mr N can demonstrate that he would more likely than not, have made a different decision, if he had been given the correct pension benefit figures in July 2017. I accept that at the time it may well have been too late for him to try to get his job back. However, I cannot see any reason to conclude that he would have acted differently had he been made aware of the correct position in July 2017.
27. I understand that Mr N has lost confidence in the Trustee however, it is not for me to provide actuarial verification of Mr N's pension benefits. If Mr N still doubts whether the September 2018 quote is correct, he should consult an actuary or independent financial adviser to have the figures verified.
28. There is no dispute that the issuance of incorrect benefit figures on two occasions would have caused Mr N serious distress and inconvenience. However, I find that the sum offered by the Trustee is more than I would have awarded in these particular circumstances. I do not consider it appropriate to make a higher award. Mr N should contact the Trustee if he wishes to accept its offer.
29. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
15 November 2018